IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1683 of 2005
To
FIRST APPEAL No. 1741 of 2005
With
LETTRES PATENT APPEAL NO. 1399 OF 1997
To
LETTERS PATENT APPEAL NO.1413 of 1997

DATE OF DECISION: 21-03-2006

==========

UNITED INDIA INSURANCE CO.LTD. - Appellants
Versus
KADVIBEN UDABHAI RATHWA & ANOTHER - Defendants

==========

[See Next Page for Full Title]

Coram:

The Hon'ble Mr. Justice Bhawani Singh, Chief Justice
The Hon'ble Mr. Justice H.K. Rathod, Judge
The Hon'ble Smt. Justice Abhilasha Kumari, Judge

Whether approved for Reporting?

For Appellants :

MR PV NANAVATI
MR VIBHUTI NANAVATI

For Respondents:
MR DM THAKKAR
MR MTM HAKIM

==========

C.A.V. JUDGMENT: (Per: HONOURABLE THE CHIEF JUSTICE)

1 These are cases of permanent disablement and death of one person due to accident caused

==========

Whether Reporters of Local Papers may be allowed to see the Judgment?

when the driver lost control of the vehicle. Claimants suffering permanent disablement filed applications under Section 140 of the Motor Vehicles Act, 1988 (hereinafter `the M.V. Act') and in case of death of one of the occupants of the vehicle, legal heirs preferred claims both under Section 140 and 166 of the M.V. Act. These applications were opposed by the Insurance Company on grounds that the claimants were gratuitous passengers travelling in a goods vehicle, they did not suffer permanent disability, their names were not in the F.I.R./charge-sheet and nexus with the accident and injuries was not established. However, the Tribunal recording the finding of involvement of the vehicle and injuries to the claimants resulting from the accident, brushed aside the defences of the Insurance Company, holding that they could be decided later on merits. Accordingly claimants were awarded compensation.

2. Aggrieved by these awards, Insurance

Company preferred appeals to this Court. Finding unable to agree with the two Single Bench judgments of this Court in *New India Assurance Co. Ltd. Vs. Mithakhan Dinakhan Notiyar (1995(2) GLR 1111)* rendered by J.M. Panchal J. and *Mahendrakumar Kalyanjibhai Vs. Haresh Bipinchandra Pathak (1998(2) GLR 1199)* by M.S. Shah J., learned Single Judge (Coram: D.H. Waghela J.), after considering various provisions of the M.V. Act, recorded in paragraph-7 that:

> "In light of the above discussion, I humbly find myself unable to subscribe to the view taken by this Court (Coram: J.M. Panchal, J.) in 1995 (2) GLR 1111 and (Coram: M.S. Shah, J.) in 1998 (2) GLR 1199 and propose to refer the matter to a larger bench under Rule 5 (1) of the Gujarat High Court Rules, 1993 with a request to have the appeals listed before a Division Bench or, if thought fit, considering the possibility of dissent, to a larger bench as expeditiously as possible. It is important to have the decision of a larger bench at the earliest in view of pendency of thousands and thousands of claim petitions in the State, the awards in which may be carried in appeal to this Court and the possibility of the procedure being adopted at present by the Claims Tribunal being held to be vitiated. The office shall place this matter before the Hon'ble the Chief Justice for appropriate orders."

3. This order was passed on 21.12.2005, but it was not brought to the notice of the Division Bench (Coram: Bhawani Singh, C.J. and

Smt. Abhilasha Kumari J.) while deciding First Appeal No.133 of 2006 (*New India Assurance co. Ltd. Vs. Babubhai Purshottambhai Harijan and others)* on 24.01.2006. Therefore, it was considered desirable to constitute a Larger Bench. This is how these matters are before this Full Bench.

4. The question advanced for consideration is `whether application under Section 140 can lie independently or has to be filed with application under Section 166'. In other words, whether in absence of application under Section 166, application under Section 140 is maintainable. If it is held that it is maintainable, Tribunal should allow the Insurance Company to raise all defences while dealing with application under Section 140 as if it is under Section 166.

5. Shri Vibhuti Nanavati, learned counsel for the appellant, contended that application under Section 140 is not maintainable independent of Section 166, it is interim in

nature and compensation has to be adjusted against the award passed on merits under Section 166. It is also contended that while deciding the application under Section 140, defences available to Insurance Company can be raised before the Tribunal. In case application under Section 140 is maintainable independent of Section 166, the same be tried on merits giving opportunity to raise defences available to it and dispose of the same, otherwise, Insurance Company will be fastened with liability without being heard in the matter. With a view to support his submissions, reliance is placed on *Bishan Devi and others Vs. Sirbaksh Singh and another (AIR 1979 SC 1862), Shivaji Dayanu Patil and another Vs. Smt. Vatschala Uttam More (AIR 1991 SC 1769), National Insurance Co. Ltd. Vs. Jethu Ram and others (1998 ACJ 921), United India Insurance Co. Ltd. Vs. Maganlal Hirabhai Patel and others (1999 ACJ 268), New India Assurance Co. Ltd. Vs. Dinanath Agrawala and others (AIR 2000 Orissa 40), New India Assurance Co. Ltd. Vs. Sita Bai and others (2000 ACJ 40), Andhavarapu Kamaraju Vs. Thammineni Seetharam and others*

(2001 ACJ 787), The Oriental Insurance Co. Ltd. Vs. Hansrajbhai V. Kodala (AIR 2001 SC 1832), Oriental Insurance Co. Ltd. Vs. B. Lakshmamma and others (2002 ACJ 670), New India Assurance Co. Ltd. Vs. Asha Rani and others (AIR 2003 SC 607), Deepal Girishbhai Soni and others Vs. United Insurance Co. Ltd. (2004(2) GLR 1597) and *National Insurance Co. Ltd. Vs. Bommithi Subbhayamma and others (2000 ACJ 721).*

6. Learned M.T.M. Hakim, learned counsel for the respondents, contended that application under Section 140 is maintainable independently of application under Section 166. They can file application under Section 140 alone and may not file application under Section 166. They may file applications under Section 140 and Section 166 simultaneously. In application under Section 140, Insurance Company cannot seek trial of defences as if it is application under Section 166. However, when applications are preferred under both Sections, no fault compensation awarded in application under Section 140 can be adjusted against compensation awarded under Section

166. Where no fault compensation is awarded against the Insurance Company, it can seek reimbursement from the owner but there is no reimbursement from the claimant. Reliance is placed on ***Shivaji Dayanu Patil and another Vs. Vatschala Uttam More (1991 ACJ 777: AIR 1991 SC 1769), National Insurance Co. Ltd. Vs. Thaglu Singh and others (1995 ACJ 248), New India Assurance Co. Ltd., Ahmedabad Vs. Mithakhan Dinakhan Notiyar & others (1995(2) GLR 1111), New India Assurance Co. Ltd. Vs. Bhajnoo and another (1996 ACJ 367), Mahendrakumar Kalyanjibhai Vs. Haresh Bipinchandra Pathan and another (1998(2) GLR 1199, New India Assurance Co. Ltd. Vs. Dinanath Agrawalla and others (2000 ACJ 525: AIR 2000 Orissa 40), Oriental Insurance Co. Ltd. Vs. Sarju Ram and others (2002 ACJ 177), New India Assurance Co. Ltd. Vs. Fida Hussain and another (2003 ACJ 1048) and New India Assurance co. Ltd. Vs. Babubhai Purshottambhai Harijan and others (First Appeal No.133 of 2006***) decided on 24.01.2006.

7. Considering the question, it is relevant to quote some relevant statutory provisions of the M.V. Act:-

CHAPTER X

Liability without fault in certain cases.

140 Liability to pay compensation in certain cases on the principle of no fault-

(1) Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of this section.

(2) xxx xxx xxx
(3) xxx xxx xxx

(4) A claim for compensation under sub-section (1) shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor shall the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of each person in the responsibility for such death or permanent disablement.

(5) Notwithstanding anything contained in sub-section (2) regarding death or bodily injury to any person, for which the owner of the vehicle is liable to give compensation for relief, he is also liable to pay compensation under any other law for the time being in force.

Provided that the amount of such compensation to be given under any other law shall be reduced from the amount of compensation payable under this section or under section 163A.

141. Provisions as to other right to claim compensation for death or permanent disablement-

(1) The right to claim compensation under section 140 in respect of death or permanent disablement of any person shall be in addition to any other right, except the right to claim under the scheme referred to in section 163A (such other right hereafter in this section referred to as the right on the principle of fault) to claim compensation in respect thereof under any other provision of this Act or of any other law for the time being in force.

(2) A claim for compensation under section 140 in respect of death or permanent disablement of any person shall be disposed of as expeditiously as possible and where compensation is claimed in respect of such death or permanent disablement under section 140 and also in pursuance of any right on the principle of fault, the claim for compensation under section 140 shall be disposed of as aforesaid in the first place.

(3) Notwithstanding anything contained in sub-section (1), where in respect of the death or permanent disablement of any person, the person liable to pay compensation under section 140 is also liable to pay compensation in accordance with the right on the principle of fault, the person so liable shall pay the first-mentioned compensation and-

a) if the amount of the first-mentioned compensation is less than the amount of the second-mentioned compensation, he shall be liable to pay (in addition to the first-mentioned compensation) only so much of the second-mentioned compensation as is equal to the amount by which it exceeds the first mentioned compensation;

(b) if the amount of the first-mentioned compensation is equal to or more than the amount of the second-mentioned compensation, he shall not be liable to pay the second-mentioned compensation.

***142. Permanent disablement**:*

For the purpose of this Chapter, permanent disablement of a person shall be deemed to have resulted from an accident of the nature referred to in sub-section (1) of section 140 if such person has suffered by reason of the accident, any injury or injuries involving:-

(a) permanent privation of the sight of either eye or the hearing of either ear, or privation of any member or joint; or

(b) destruction or permanent impairing of the powers of any member or joint; or

(c) permanent disfiguration of the heard or face.

143. xxx xxx xxx

144. Overriding effect:

The provisions of this Chapter shall have effect notwithstanding anything contained in any other provision of this Act or of any other law for the time being in force.

CHAPTER XI.

INSURANCE OF MOTOR VEHICLES AGAINST THIRD PARTY RISKS

145. Definitions: In this Chapter,-

(a) xxx xxx xxx
(b) xxx xxx xxx

***(c) "liability"**, wherever used in relation to the death of or bodily injury to any person, includes liability in respect thereof under section 140;*

(d) xxx xxx xxx
(e) xxx xxx xxx
(f) xxx xxx xxx
(g) xxx xxx xxx

146. xxx xxx xxx
147. xxx xxx xxx
148. xxx xxx xxx

149. Duty of insurers to satisfy judgments and awards against persons insured in respect of third party risks-

(1) If, after a certificate of insurance has been issued under sub-section (3) of section 147 in favour of the person by whom a policy has been effected, judgment or award in respect of any such liability as is required to be covered by a policy under clause (b) of sub-section (1) of section 147 (being a liability covered by the terms of the policy) or under the provisions of section 163A is obtained against any person insured by the policy, then, notwithstanding that the insurer may be entitled to avoid or cancel or may have avoided or cancelled the policy, the insurer shall, subject to the provisions of this section, pay to the person entitled to the benefit of the decree any sum not exceeding the sum assured payable thereunder, as if he were the judgment debtor, in respect of the liability,

together with any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any enactment relating to interest on judgments.

(2) No sum shall be payable by an insurer under sub-section (1) in respect of any judgment or award unless, before the commencement of the proceedings in which the judgment or award is given, the insurer had notice through the Court or, as the case may be, the Claims Tribunal of the bringing of the proceedings, or in respect of such judgment or award so long as execution is stayed thereon pending an appeal; and an ***insurer*** *to whom notice of the bringing of any such proceedings is so given* ***shall be entitled*** *to be made a party thereto and to* ***defend*** *the action on any of the following grounds, namely:-*

(a) *that there has been a breach of a specified condition of the policy, being one of the following conditions, namely:-*

(i) a condition excluding the use of the vehicle-

(a) for hire or reward, where the vehicle is on the date of the contract of insurance a vehicle not covered by a permit to ply for hire or reward, or

(b) for organised racing and speed testing, or

(c) for a purpose not allowed by the permit under which the vehicle is used, where the vehicle is a transport vehicle, or

(d) without side-car being attached where the vehicle is a motor cycle; or

(ii) a condition excluding driving by a named person or persons or by any person who is snot duly licensed, or by any person who has been disqualified for holding or obtaining a driving license during the period of disqualification; or

(iii)a condition excluding liability for injury caused or contributed to by conditions of war, civil war, riot or civil commotion; or

(b) that the policy is void on the ground that it was obtained by the non-disclosure of a material or by a representation of fact which was false in some material particular.

(3) xxx xxx xxx

(4) Where a certificate of insurance has been issued under sub-section (3) of section 147 to the person by whom a policy has been effected, so much of the policy as purports to restrict the insurance of the persons insured thereby by reference to any condition other than those in clause (b) of sub-section (2) shall, as respects such liabilities as are required to be covered by a policy under clause (b) of sub-section (1) of section 147, be of no effect:

Provided that any sum paid by the insurer towards the discharge of any liability of any person which is covered by the policy by virtue only of this sub-section shall be recoverable by the insurer from that person.

(5) If the amount which an insurer becomes liable under this section to pay in respect of a liability incurred by a person insured by a policy exceeds the amount for which the insurer would, apart from the provisions of this section, be liable under the policy in respect of that liability, the insurer shall be entitled to recover the excess from the person.

(6) xxx xxx xxx

(7) No insurer to whom the notice referred to in sub-section (2) or sub-section (3) has been given shall be entitled to avoid his liability to any person entitled to the benefit of any such judgment or award as is referred to in sub-section (1) or in such judgment as is referred to in sub-section (2) or in the corresponding law of the reciprocating country, as the case may be.

Explanation: - For the purposes of this section, "Claims Tribunal" means a Claims Tribunal constituted under section 165 and "award" means an award made by that Tribunal under section 168."

150 to 160 xxx xxx xxx

161. Special provisions as to compensation in case of hit and run motor accident.-

(1) For the purposes of this section, section 162 and section 163 -

(a) "grievous hurt" shall have the same meaning as in the Indian Penal Code, 1860 (45 of 1860);

(b) "hit and run motor accident: means an accident

arising out of the use of a motor vehicle or motor vehicles the identity whereof cannot be ascertained in spite of reasonable efforts for the purpose;

(c) "scheme" means the scheme framed under section 163.

(2) Notwithstanding anything contained in the General Insurance Business (Nationalization) Act, 1972 (57 of 1972) or any other law for the time being in force or any instrument having the force of law, the General Insurance Corporation of India formed under section 9 of the said Act and the insurance companies for the time being carrying on general insurance business in India shall provide for paying in accordance with the provisions of this Act and the scheme, compensation in respect of the death of, or grievous hurt to persons resulting from hit and run motor accidents.

(3) Subject to the provisions of this Act and the scheme, there shall be paid as compensation-

(a) in respect of the death of any person resulting from a hit and run motor accident, a fixed sum of twenty-five thousand rupees;

(b) in respect of grievous hurt to any person resulting from a hit and run motor accident, a fixed sum of twelve thousand and five hundred rupees.

(4) The provisions of sub-section 91) of section 166 shall apply for the purpose of making applications for compensation under this section as they apply for the purpose of making applications for compensation referred to in that sub-section.

162. Refund in certain cases of compensation paid under section 161.-

(1) The payment of compensation in respect of the death of, or grievous hurt to, any person under section 161 shall be subject to the condition that if any compensation (hereafter in this sub0section referred to as the other compensation) or other amount in lieu of or by way of satisfaction of a claim for compensation is awarded or paid in respect of such death or grievous hurt under any other provision of this Act or any other law or otherwise so much of the other compensation or other amount aforesaid as is equal to the compensation paid under section 161 shall be refunded to the insurer.

(2) Before awarding compensation in respect of an accident involving the death of, or bodily injury to, any person arising out of the use of a motor

vehicle or motor vehicles under any provision of this Act (other than section 161) or any other law, the Tribunal, Court or other authority awarding such compensation shall verify as to whether in respect of such death or bodily injury compensation has already been paid under section 161 or an application for payment of compensation is pending under that section, and such Tribunal, Court or other authority shall -

(a) if compensation has already been paid under section 161, direct the person liable to pay the compensation awarded by it to refund to the insurer, so much thereof as is required to be refunded in accordance with the provisions of sub-section (1);

(b) if an application for payment of compensation is pending under section 161 forward the particulars as to the compensation awarded by it to the insurer.

Explanation.- *For the purpose of this sub-section, an application for compensation under section 161 shall be deemed to be pending-*

(i) if such application has been rejected, till the date of the rejection of the application, and
(ii) in any other case, till the date of payment of compensation in pursuance of the application.

163. Scheme for payment of compensation in case of hit and run motor accidents.-

(1) The Central Government may, by notification in the Official Gazette, make a scheme specifying, the manner in which the scheme shall be administered by the General Insurance Corporation, the form, manner and the time within which applications for compensation may be made, the officers or authorities to whom such applications may be made, the procedure to be followed by such officers or authorities for considering and passing orders on such applications, and all other matters connected with, or incidental to, the administration of the scheme and the payment of compensation.

(2) A scheme made under sub-section (1) may provide that-

(a) a contravention of any provision thereof shall be punishable with imprisonment for such term as may be specified but in no case exceeding three months, or with fine which may extend to such amount as may be specified but in no case exceeding five hundred

rupees or with both;

(b) the powers, functions or duties conferred or imposed on any officer or authority by such scheme may be delegated with the prior approval in writing of the Central government, by such officer or authority to any other officer or authority;

(c) any provision of such scheme may operate with retrospective effect from a date not earlier than the date of establishment of the Solatium Fund under the Motor Vehicles Act, 1939 (4 of 1939) as it stood immediately before the commencement of this Act:

Provided that no such retrospective effect shall be given so as to prejudicially affect the interests of any person who may be governed by such provision.

163A. Special provisions as to payment of compensation on structured formula basis.-

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorized insurer shall be liable liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be.

***Explanation.-** For the purposes of this sub-section, "permanent disability" shall have the same meaning and extent as in the Workmen's Compensation Act, 1923 (8 of 1923).*

(2) In any claim for compensation under sub-section 91), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from to time amend the Second Schedule.

163B. Option to file claim in certain cases.-

Where a person is entitled to claim compensation under section 140 and section 163A, he shall file the claim under either of the said sections and not

under both.

CHAPTER XII
CLAIMS TRIBUNALS

165. Claims Tribunals -

(1) A State Government may, by notification in the Official Gazette, constitute one or more Motor Accidents Claims Tribunals (hereafter in this Chapter referred to as Claims Tribunal) for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of accidents involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both.

Explanation.- For the removal of doubts, it is hereby declared that the expression "claims for compensation in respect of accidents involving the death of or bodily injury to persons arising out of the use of motor vehicles" includes claims for compensation under section 140 and section 163A."

166. Application for compensation.-

(1) An application for compensation arising out of an accident of the nature specified in sub-section (1) of section 165 may be made-

(a) xxx xxx xxx
(b) xxx xxx xxx
(c) xxx xxx xxx
(d) xxx xxx xxx

Provided that.....

(2) Every application under sub-section (1) shall be made, at the option of the claimant, either to the Claims Tribunal having jurisdiction over the area in which the accident occurred or to the Claims Tribunal within the local limits of whose jurisdiction the claimant resides or carries on business or within the local limits of whose jurisdiction the defendant resides, and shall be in such form and contain such particulars as may be prescribed:

Provided that where no claim for compensation under section 140 is made in such application, the application shall contain a separate statement to that effect immediately before the signature of the applicant.

(3) xxx xxx xxx

(4) The Claims Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of section 158 as an application for compensation under this Act.

168. Award of the Claims Tribunal-

On receipt of an application for compensation made under section 166, the Claims Tribunal shall, after giving notice of the application to the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, as the case may be, each of the claims and, subject to the provisions of section 162 may make an award determining the amount of compensation which appears to it to be just and specifying the person or persons to whom compensation shall be paid and in making the award the Claims Tribunal shall specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or by all or any of them, as the case may be:

Provided that where such application makes a claim for compensation under section 140 in respect of the death or permanent disablement of any person, such claim and any other claim (whether made in such application or otherwise) for compensation in respect of such death or permanent disablement shall be disposed of in accordance with the provisions of Chapter X.

(2) xxx xxx xxx
(3) xxx xxx xxx

169. Procedure and powers of Claims Tribunals-

(1) In holding any inquiry under section 168, the Claims Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit.

(2) The Claims Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Claims Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

(3) Subject to any rules that may be made in this behalf, the Claims Tribunal may, for the purpose of adjudicating upon any claim for compensation, choose one or more persons possessing special knowledge of and matter relevant to the inquiry to assist it in holding the inquiry.

170. Impleading insurer in certain cases:-

Where in the course of any inquiry, the Claims Tribunal is satisfied that-

(a) there is collusion between the person making the claim and the person against whom the claim is made, or

(b) the person against whom the claim is made has failed to contest the claim,

it may, for reasons to be recorded in writing, direct that the insurer who may be liable in respect of such claim, shall be impleaded as a party to the proceeding and the insurer so impleaded shall thereupon have, without prejudice to the provisions contained in sub-section (2) of section 149, the right to contest the claim on all or any of the grounds that are available to the person against whom the claim has been made."

171. Award of interest where any claim is allowed.-

Where any Claims Tribunal allows a claim for compensation made under this Act, such Tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf.

173. Appeals.-

(1) Subject to the provisions of sub-section (2) any person aggrieved by an award of a Claims Tribunal may, within ninety days from the date of the award, prefer an appeal to the High Court:

Provided that no appeal by the person who is required to pay any amount in terms of such award shall be entertained by the High Court unless he has deposited with it twenty-five thousand rupees or fifty per cent of the amount so awarded, whichever is less, in the manner directed by the High Court:

Provided further that the High Court any entertain the appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal in time.

(2) No appeal shall lie against any award of a Claims Tribunal if the amount in dispute in the appeal is less than ten thousand rupees.

175. Bar on jurisdiction of Civil Courts-

Where any Claims Tribunal has been constituted for any area, no Civil Court shall have jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal for that area, and no injunction in respect of any action taken or to be taken by or before the Claims Tribunal in respect of the claim for compensation shall be granted by the Civil Court.

176. Power of State Government to make rules-

A State Government may make rules for the purpose of carrying into effect the provisions of sections 165 to 174, and in particular, such rules may provide for all or any of the following matters, namely-

(a) the form of application for claims for compensation and the particulars it may contain, and the fees, if any, to be paid in respect of such application;

(b) the procedure to be followed by a Claims Tribunal in holding an inquiry under this Chapter;

(c) the powers vested in a Civil Court which may be exercises by a Claims Tribunal;

(d) the form and the manner in which and the fees (if any) on payment of which an appeal may be preferred against an award of a Claims Tribunal; and

(e) any other matter which is to be, or may be, prescribed.

The Gujarat Motor Vehicles Rules, 1989:

Chapter X

Claims Tribunals

211. Procedure regarding compensation arising out of accidents.-

(1) An application for compensation under sub-section (1) of section 166 shall be made to the Claims Tribunal in Form Comp. A. and shall contain the particulars specified in that form.

(2) Every such application shall be sent to the Tribunal, or to the Chairman in case the Tribunal consists of more than one member, by registered post or may be presented to such member of the staff of the Tribunal as the Tribunal, or as the case may be, the Chairman may authorise for the purposes and, if so sent or presented, shall, unless the Tribunal or Chairman otherwise directs, be made in duplicate and shall be signed by the applicant.

(3) There shall be appended to every such application a certificate which shall be signed by the applicant tot he effect that the statement of facts contained in the application is to be best of his knowledge and belief, true.

(4) If the claim in the application does not exceed Rs.10,000/- then every such application shall be accompanied by all the documents and affidavits for the proof of those documents and of all facts on which the applicant relies in support of his claim, entered in a properly prepared list of documents and affidavits. The claims Tribunal may not allow the applicant to rely in support of his claim on any documents or affidavits not filed along with the application, unless he satisfies the Claims Tribunal that for god or sufficient cause, he was prevented from filing such documents or affidavits, as the case may be, along with his application.

(5) There shall be appended to every such application, the following documents namely:-

(i) First Information Report in respect of the

accident,

(ii) Medical certificate of injuries or Postmortem Report, or death certificate; and

(iii)a certificate regarding ownership and insurance particulars of vehicle involved in the accident from the Regional Transport Officer or the Police Station, concerned.

212. Fees.-

(1) An application for compensation under rule 211, where a claim is for an amount not exceeding Rs.9,999/- shall be accompanied by an amount of ten rupees:

Provided that if the person making the application succeeds he shall be liable to pay by way of fee an amount equal to the full fee leviable or the amount at which the claim is awarded by the Tribunal according to the following scale:

(i) If the amount at which the claim is awarded does not exceed one hundred rupees – Ten rupees.

(ii) If the amount at which claim is awarded exceeds one hundred rupees, for every ten rupees or part thereof, in excess of one hundred rupees, upto one thousand rupees – One rupees.

(iii)If the amount at which the claim is awarded exceeds one thousand rupees, for every one hundred rupees or part thereof in excess of one thousand rupees, upto five thousand rupees – Six Rupees and twenty five paise.

(iv) If the amount at which the claim is awarded exceeds five thousand rupees for every two hundred and fifty rupees, or part thereof in excess of five thousand rupees, upto nine thousand nine hundred and ninety nine rupees – Twenty rupees.

(2) An application for compensation under rule 211 in respect of a claim of an amount exceeding Rs.9,999 shall be accompanied by an amount equal to one-half of the fee leviable on the amount at which the claim is valued in the application according to the following scale:

(i) If the amount at which the claim is valued does not exceed ten thousand rupees – Seven hundred fifty rupees.

(ii) If the amount at which the claim is valued exceeds ten thousand rupees, for every fee hundred rupees, or part thereof, in excess of ten thousand rupees, upto twenty thousand rupees – Thirty five rupees.

(iii) If the amount at which the claim is valued exceeds twenty thousand rupees for every one thousand rupees, or part thereof, in excess of twenty thousand rupees, upto thirty thousand rupees – Forty five rupees.

(iv) If the amount at which the claim is valued exceeds fifty thousand rupees, for every five thousand rupees, or part thereof, in excess of thirty thousand rupees, upto fifty thousand rupees – Sixty rupees.

(v) If the amount at which claim is valued exceeds fifty thousand rupees, for every five thousand rupees, or part thereof, in excess of fifty thousand rupees, upto one lakh of rupees – Eighty rupees.

(vi) If the amount at which the claim is valued exceeds one lakh rupees for every ten thousand rupees, or part thereof, in excess of one lakh of rupees –One hundred rupees.

Subject to a maximum fee of fifteen thousand rupees only;

Provided that if the person making the application succeeds, he shall be liable to make god the deficit if any, between the full fee payable on the amount at which the claim is awarded by the Tribunal according to the said scale and the fee already paid by him.

(3) The fees payable under this rule shall be paid in the form of Court fee stamps.

213. Exercise of powers of Civil Court.- *The claims Tribunal may exercise all the powers of a Civil Court save in so far as the same are not inconsistent with the provisions of the Motor Vehicles Act, 1988 and the rules made thereunder.*

214 to 216 xxx xxx xxx

217. Examination of applicant.- *On receiving an application under rule 211, the Claims Tribunal may examine the applicant upon oath, and the substance of such examination shall be reduced in writing and shall be signed by the member constituting the Tribunal or as the case may, be, the Chairman.*

218. Summary dismissal of application.- *The Claims Tribunal may, after considering the application and the statement, if any, of the applicant recorded under rule 217, summarily dismiss the application, if for reasons to be recorded, the Tribunal is of opinion that there are not sufficient grounds for proceeding therewith.*

219. Notice to opposite party.*-If the application is not dismissed under rule 218, the Claims Tribunal shall send to the insurer or the owner or the driver of the motor vehicle against whom the applicant claims relief (hereinafter referred to as "opposite party"), a copy of the application and if the claim in the application does not exceed Rs.10,000/- also copies of all the documents and affidavits, together with a list thereof filed by the applicant under sub-rule (4) of rule 211, together with a notice of the date on which it shall dispose of the application; and may, in case in which the claim in the application exceeds Rs.10,000/-, call upon the parties to produce on that date any evidence which they may wish to tender.*

220. Examination of opposite party.-

(1) The opposite party may, and if so required by the Claims Tribunal, shall at or before the first hearing of within such time as the Claims Tribunal may permit, file a written statement dealing with the claim raised in the application, and any such written statement shall form part of the record:

Provided that in case of an application in which the claim does not exceed Rs.10,000/- the opposite party shall, on the date mentioned in the notice sent to him, file his written statement dealing with the claim raised in the application together with all the documents and affidavits for the proof of those documents and of facts on which he relies in support of his defence of the application entered in a properly prepared list of documents, affidavit and shall give to the applicant copies of the written statement, documents and affidavits.

Provided further that the Claims Tribunal may not allow the opposite party to rely in support of his defence, on any documents or affidavit not filed along with the written statement, unless he satisfies the Claims Tribunal that for good or sufficient cause, he was prevented from filing such document or affidavit, as the case may be, along with his written statement.

(2) If the opposite party contests the claim, the Claims Tribunal may and if no written statement has been filed, shall proceed to examine him upon the claim and shall reduce the results of the examination in writing.

221. Framing of issue.*- After considering any written statement and the result of any examination of the parties, the Claims Tribunal shall ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed*

to frame and record the issues upon which the right decision of the case appears to it to depend.

222. Determination of issue.- *After framing the issues, the Claims Tribunal shall proceed to record evidence thereon which each party may desire to produce.*

223. Summoning of witnesses.- *If an application is presented by any party to the proceedings for citation of witnesses, the Claims Tribunal shall, on payment of such expenses and fees, if any, as it may determine, issue summons for the appearance of such witnesses, unless it considers that their appearance is not necessary for a just decision of the case.*

224. Recording of evidence.- *The member constituting the Claims Tribunal or the Chairman thereof shall make a brief memorandum of the substance of the evidence of every witness as examination of the witness proceeds and such memorandum shall be written and signed by the member or the Chairman thereof with his own hand and shall form part of the record.*

Provided that, if the member or the Chairman is prevented from making such memorandum, he shall record the reason of his inability to do so and shall cause such memorandum to be made in writing from his dictation and shall sign the same, and such memorandum shall form part of the record:

Provided further that the evidence of any medical witness shall be taken down as early as may be, word for word.

225. xxx xxx xxx

226. Summary examination.-

(1) The Claims Tribunal during a local inspection or at any other time, save at a formal hearing of a case pending before it, may examine summarily any person likely to be able to give information relating to such case, whether such person has been or is to be called as a witness in the case or not, and whether any or all of the parties are present or not.

(2) No oath shall be administered to a person examined under sub-rule (1).

227. xxx xxx xxx

228. judgment.- *The Claims Tribunal, in passing orders, shall record concisely in a judgment the finding on each of the issues framed, and its reasons for such finding.*

229. Application of Code of Civil Procedure.- *In so far as these rules make no provision or make*

insufficient provision, the Claims Tribunal shall follow the procedure laid down in the Code of Civil Procedure, 1908 (V of 1908) for the trial of suits.

230. xxx xxx xxx

231. Procedure regarding compensation on the principal of no fault:-

Notwithstanding anything contained in rules 211 to 230 and 232, in the case of a claim for compensation under Chapter X of the Act, the procedure shall be as follows, namely-

(1) XXX XXX XXX
(2) XXX XXX XXX
(3) XXX XXX XXX

(4) *The claims Tribunal shall dispose of the application for compensation within six weeks from the date of receipt of such application.*

(5) *For the purpose of adjudicating and awarding the claim, the Claims Tribunal shall follow the procedure of summary trial as contained in Chapter XXI of the Code of Criminal Procedure, 1973.*

(6) XXX XXX XXX

(7) *For the purpose of adjudicating and awarding the claim, the Claims Tribunal shall obtain whatever information and document considered necessary by it from the police, medical and other authorities.*

(8) *On receipt of the application for compensation, the Claims Tribunal shall give notice to the owner, and the insurer, if any, of the vehicle involved in the accident, directing them to appear on a date not later than ten days from the date of issue of such notice. The date so fixed for such appearance shall also be not later than fifteen days from the receipt of the application for compensation. The Claims Tribunal shall state in such notice that, in case they fail to appear on such appointed date, the Tribunal shall proceed ex parte on the presumption that they have no contention to make against the award of compensation.*

(9) XXX XXX XXX
(10) XXX XXX XXX
(11) XXX XXX XXX

*(**12**) The Claims Tribunal, in passing the orders, shall*

also direct the owner or insurer, of the vehicle involved in the accident, to pay the amount of compensation to the claimant within thirty days from the date of the said orders."

8. In Bishan Devi case (supra), the Apex Court said in paragraphs-14 to 21 that:

"14. The instant case brings into focus the difficulties experienced by dependents in obtaining relief before the Motor Accidents Claims Tribunal. The victim in this case Bhagwan Das was run over by a motor vehicle on the night between 8th and 9th July, 1961 leaving behind him his wife Bishan Devi and four minor children. For eighteen long years they have been before courts asking for some compensation for the death of their bread-winner due to rash and negligent driving of a motor vehicle. One is tempted to remark that they would have been better off but for their hope of getting some relief in courts. They not only had to spend their time in courts but to borrow to fight for their rights. It is common knowledge that such helpless and desperate condition is exploited by unscrupulous persons who manage to get away with the bulk of the compensation money if and when the claimants succeed in getting it.

15. The law as it stands requires that the claimant should prove that the driver of the vehicle was guilty of rash and negligent driving. The burden thus placed is very heavy and difficult to discharge by the claimant. The records of police investigation are not made available to the Tribunal. The officers who investigated the accident are seldom available to give evidence before the Claims Tribunal and assist in coming to a proper conclusion. The insurance company in quite a few cases, as in the present one, takes an unreasonable stand and raises all sorts of untenable pleas just to thwart relief to the dependents. In many of the claims it turns out to be beyond the capacity of the claimant to maintain his claim in a court of law.

16. Due to the inordinate delay in disposal of claim petitions before the Motor (Accidents) Claims Tribunal the badly needed relief to the claimants is not available for several years. Further time is taken in appeals. All along the dependents will have to carry on without any relief. It has been time and again pointed out by courts that insistence of proof of rash and negligent driving causes considerable hardship on the claimants.

17. We may point out that repeated suggestions have been made by this Court and several High Courts expressing the desirability of bringing a social insurance which would provide for direct payment to the dependents of the victim. This Court in Minu B. Mehta vs. Balkrishna Ramchandra Nayan, 1977 ACJ 118 has referred to the decision of the Kerala High Court in Kesavan Nair v. State Insurance Officer, 1971 ACJ 219 where the High Court expressed itself thus:

"Out of a sense of humanity and having due regard to the handicap of the innocent victim in establishing the negligence of the operator of the vehicle a blanket liability must be cast on the insurers."

The Madras High Court in M/s. Ruby Insurance Co. Ltd. v. V. Govindaraj, A.A.O. Nos. 607 of 1973 and 296 of 1974 decided on 13-12-1976 has suggested the necessity of having social insurance to provide cover for the claimants irrespective of proof of negligence to a limited extent say Rs.250 to Rs.300 a month.

18. In a recent decision in State of Haryana v. Darshan Devi, 1979 ACJ 205 this Court observed:-

"Now that insurance against third party risk is compulsory and motor insurance is nationalised and transport itself is largely by State Undertakings, the principle of no fault liability and on the spot settlement of claims should become national policy."

19. Unless these ideas are accepted by the legislature and embodied in

appropriate enactments Courts are bound to administer and give effect to the law as it exists today.

20. It is for the legislature to make provisions for immediate and adequate relief to the defendants in motor accident cases. The legislature may consider making the liability to pay minimum compensation absolute as is provided for to the dependents of victims in rail and air accidents. When a person dies in a motor accident, the number of his dependents and the period of their dependency may be ascertained. The minimum compensation may be paid every month to the dependents according to their share for the period to which they are entitled.

21. The insurance companies are now nationalised and the necessity for awarding lump sum payment to secure the interest of the dependents is no longer there. Regular monthly payments could be made through one of the nationalised banks nearest to the place of residence of the dependents. Payment of monthly installments and avoidance of lump sum payment would reduce substantially the burden on the insurer and consequently of the insured. Ordinarily in arriving at the lump sum payable, the Court takes the figure at about 12 years payment. Thus in the case of monthly compensation of Rs.250 payable, the lump sum arrived at would be between 30,000 and 35,000. Regular monthly payment of Rs.250 can be made from the interest of the lump sum alone and the payment will be restricted only for the period of dependency of the several dependents. In most cases it is seen that a lump sum payment is not to the advantage of the dependents as large part of it is frittered away during litigation and by payment to persons assisting in the litigation. It may also be provided that if the dependents are not satisfied with the minimum compensation payable they will be at liberty to pursue their remedies before the Motor Accidents Claims Tribunal."

This decision does not help the appellant, rather, it emphasizes the need for a mechanism

for payment of compensation to victims of accident to avoid harassment and exploitation by unscrupulous persons, inordinate delay, untenable defences. It propounds for desirability of legislation providing for payment of minimum compensation absolute and giving liberty to pursue remedies before the Motor Accidents Claims Tribunal.

9. In Shivaji Dayanu Patil case (supra), the appellant raised question with regard to procedure to be followed by Claims Tribunal while adjudicating claims under Section 92 of the Act and submitted that such claims should be adjudicated like claims under Section 110A of the Act and that the claimant must first adduce evidence, establish his/her case and that the owner as well as the insurer of the vehicle in question must have right to adduce evidence to rebut the same. These submissions were advanced in the context of Bombay Motor Vehicle Rules, 1989, recorded in paragraph-37 of the judgment. Thereafter, dealing with the

contention, the Apex Court said in paragraphs-42 & 43:

> *"42. Rule 306C prescribes the procedure of disbursement of compensation u/S.92A to the legal heirs in case of death. The submission of Shri Sanghi is that in spite of the aforesaid amendments which have been introduced in the Rules after the enactment of S.92A, the Claims Tribunal is required to follow the procedure contained in the other rules before awarding compensation under S.92A of the Act. In other words, it must proceed to adjudicate the claim after the opposite party is afforded an opportunity to file the written submission under Rule 298, by framing issues under Rule 299 and after recording evidence in accordance with Rules 300 and 301 and that it is not permissible for the Claims Tribunal to make an order purely on the basis of the documents referred to in Rules 291A, 306A and 306B. In our opinion, the said submission of Shri Sanghi cannot be accepted. The object underlying the enactment of Section 92A is to make available to the claimant compensation amount to the extent of Rs.15,000/- in case of death and Rs.7,500/- in case of permanent disablement as expeditiously as possible and the said award has to be made before adjudication of the claim u/S.110A of the Act. This would be apparent from the provisions of S.92B of the Act. S.92B(2) of the Act provides that a claim for compensation u/S.92A in respect of death or permanent disablement of any person shall be disposed of as expeditiously as possible and where compensation is claimed in respect of such death or permanent disablement u/S.92A and also in pursuance of any right on the principle of fault, the claim for compensation u/S.92A shall be disposed of as aforesaid in the first place. With a view to give effect to the said directive contained in S.92B of the Act, the Maharashtra Government has amended the Rules and has inserted special provisions in respect of claims under S.92A in Rules 291A, 291B, 297(2), 306A, 306B, 306C and 306D of the Rules. The object underlying the said provisions is to enable expeditious disposal of a claim petition u/S.92A of the Act. The said object would be defeated if the Claims Tribunal is required to hold a regular rial in the same manner as for adjudicating a claim petition u/S.110A of the*

Act. Moreover, for awarding compensation u/S.92A of the Act, the Claims Tribunal is required to satisfy itself in respect of the following matters:

(i) an accident has arisen out of the use of a motor vehicle;
(ii) the said accident has resulted in permanent disablement of the person who is making the claim or death of the person whose legal representative is making the claim;
(iii) the claim is made against the owner and the insurer of the motor vehicle involved in the accident.

43. The document referred to in Rules 291A and 306B will enable the Claims Tribunal to ascertain the necessary facts in regard to these matters. The panchnama and the First Information Report will show whether the accident had arisen out of the use of the motor vehicle in question. The Injury Certificate or the post-mortem report will show the nature of injuries and the cause of death. The Registration Certificate and Insurance Certificate o the motor vehicle will indicate who is the owner and insurer of the vehicle. In the event of the Claims Tribunal feeling doubtful about the correctness or genuineness of any of these documents or if it considers it necessary to obtain supplementary information or documents, Rules 306A empowers the Claims Tribunal to obtain such supplementary information or documents from the Police, medical or other authorities. This would show that Rr.291A, 306A and 306B contain adequate provisions which would enable the Claims Tribunal to satisfy itself in respect of the matters necessary for awarding compensation u/S.92A of the Act and in view of these special provisions which were introduced in the Rules by the amendments in 1984, the Claims Tribunal is not required to follow the normal procedure prescribed under the Act and the Rules with regard to adjudication of a claim u/S.110A of the Act for the purpose of making an order on a claim petition u/S.92A of the Act.

In this case, claim in the applications rested on no fault liability and fault

liability, therefore, the Apex Court rightly said that claim under Section 92A in respect of permanent disablement of any person shall be disposed of as expeditiously as possible and the said award has to be passed before adjudication of the claim under Section 110A of the Act. The object of deciding no fault claim expeditiously would be defeated if the Claims Tribunal is required to hold a regular trial in the same manner as for adjudicating the scheme under Section 110A of the Act. Moreover, for awarding compensation under Section 92A of the Act, the Claims Tribunal is required to satisfy in respect of matters where:

(i) an accident has arisen out of the use of a motor vehicle;

(ii) the said accident has resulted in permanent disablement of the person who is making the claim or death of the person whose legal representative is making the claim;

(iii) the claim is made against the owner and

the insurer of the motor vehicle involved in the accident.

10. In Jethu Ram case (supra), it is held by the Apex Court that where the amount of no fault liability is suffered by the Insurance Company, it is entitled to recover the same from the owner where it is not liable to pay compensation on merits of the case. There is no dispute on this question but this decision does not hold that in the absence of fault claim, no fault claim is not maintainable. In Sita Bai case (supra), the question for consideration is different, therefore, no assistance can be taken from it.

11. In Hansrajbhai V. Kodala case (supra) it is held that determination of compensation under structured formula under Section 163-A is in the alternative and not in addition to the determination of compensation under Section 168 on principle of fault liability, which means determination of compensation

under Section 163A and Section 168 are independent of each other and compensation determined under either of them is final, meaning thereby, claimant cannot resort to fault liability compensation after having got compensation under either of the two provisions. The Court further holds that legislature did not provide for additional compensation under Section 163A or under Section 168, like it did under Sections 140. In case of hit and run motor accidents under Section 161, there is provision for adjustment or refund of compensation on determination of fault liability award under Section 168 of the Act. There is no procedure for refund or adjustment of compensation paid under Section 163A. In paragraph 15, the Apex Court said:

> *"15. The aforesaid conclusion gets support from the language used in Sections 140, 141, 161 and 163A. Sections 140 to 143 provide for liability of the owner of the vehicle in case of death or permanent disablement of any person resulting from an accident arising out of use of a motor vehicle or motor vehicles to pay compensation without any pleading or establishing that death or permanent disablement was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles. By way of earliest relief, victim is entitled to get the*

amount of compensation of Rs.50,000/- in case of death and Rs.25,000/- in case of permanent disablement. It is further provided that such claim shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement has occurred. Sub-section (5) of Section 140 upon which much reliance is placed by learned counsel for the Insurance Companies as well as the claimants requires consideration and interpretation, which inter alia provides that owner of the vehicle is also liable to pay compensation under any other law for the time being in force. The word also indicates that the owner of the vehicle would be additionally liable to pay compensation under any other law for the time being in force. The proviso to sub-section (5) further clarifies that the amount of compensation payable under any other law for the time being in force is to be reduced from the amount of compensation payable under sub-section (2) or under section 163A. This is further crystalized in Section 141 which provides that right to claim compensation under Section 140 is in addition to any other right to claim compensation on the principle of fault liability and specifically excludes the right to claim compensation under the scheme referred to in Section 163A. Section 163B also provides that where a person is entitled to claim compensation under Section 140 and Section 163A, he can file the claim under either of the said sections, but not under both. Similarly, Section 141(1) also crystalises that right to claim compensation under Section 140 is in addition to the right to claim compensation in respect thereof under any other provision of the Act or any other law for the time being in force. Sub-section (2) further provides that if the claimant has filed an application for compensation under Section 140 and also in pursuance of any right on the principle of fault liability, the claim for compensation under Section 140 is to be disposed of in the first place and as provided in sub-section (3) the amount received under sub-section (2) of Section 140 is to be adjusted while paying the compensation on the principle of fault liability. On the basis of fault liability if additional amount is required to be paid then the claimant is entitled to get the same but there is no provision for refund of the amount received under

Section 140(2), even if the Claims Tribunal arrives at the conclusion that the claimant was not entitled to get any compensation on the principle of fault liability. Further, Section 144 gives overriding effect to the provisions made under Chapter X by providing that the provisions of the chapter shall have effect notwithstanding any thing contained in any provision of the Act or of any other law for the time being in force. From the aforesaid Sections, one aspect is abundantly clear that right to claim compensation on the basis of no-fault liability under Section 140 is in addition to the right to claim compensation on the principle of fault liability or right to get compensation under any other law. Such amount is required to be reduced from the amount payable under the fault liability or compensation which may be received under any other law. If nothing is payable under the Act then the claimant is not required to refund the amount received by him. As against this, there is specific departure in the scheme envisaged for paying compensation under Section 163A. Section 163A nowhere provides that this payment of compensation on no fault liability on the basis of structured formula is in addition to the liability to pay compensation in accordance with the right to get compensation on the principle of fault liability and unless otherwise provided for the same cause, compensation cannot be paid again.

Provisions for refund of compensation if compensation is received under any other law or under the Act:"

Further, in paragraph-16, it has been held that:

"16. Further, as the legislature has not provided for refund or adjustment of compensation received under the Act and compensation payable under Section 163A, it would mean that Scheme of payment of compensation under Section 163A is in alternative to determination of compensation under Section 168. As stated above, sections 140(5) and 141(3) make provisions for reduction of compensation paid under Section

140. Under proviso to sub-Section (5) of Section 140, the amount of such compensation which the claimant is entitled to receive under any other law is required to be reduced from the amount of compensation payable under Section 140 or under Section 163A. Under Section 141(3), if a person gets the compensation on principle of fault liability, then also provision is made for adjustment of compensation received under section 140. There is no such provision for adjustment of compensation received under section 163A from the compensation receivable under the Act on the principle of fault. Similarly, section 161 provides for payment of compensation in case of hit and run motor accidents. Under Section 161(3), in cases in respect of the death of any person resulting from a hit and run motor accident, a fixed sum of Rs.25,000/- is to be paid as compensation and in case of grievous hurt, the amount fixed is Rs.12,500/-. Thereafter, under Section 162, the legislature has provided for refund of compensation paid under Section 161 on the principle of hit and run motor accident by providing that the payment of compensation under Section 161 shall be subject to the condition that if any compensation is awarded under any other provision of this Act or any other law or otherwise, so much amount as is equal to the compensation paid under Section 161 is required to be adjusted or refunded to the insurer. Under section 162(2), duty is cast on the Tribunal, Court or other authority awarding such compensation to verify as to whether in respect of such death or bodily injury, compensation has already been paid under Section 161 and to make adjustment as required thereunder. Result is claimant is not entitled to have additional compensation but at the same time he can proceed by filing application under Section 165 or under the Workmen Compensation Act (i.e. other law) and if he gets compensation under either of the said provisions, the amount paid under Section 161 is to be refunded or adjusted."

Further, in paragraph-17 the Court said:

"17. The contention of the learned counsel for the claimants that

compensation payable under Section 163A is in addition to the determination of compensation on the basis of fault liability and thereafter it could be adjusted on the similar lines provided under Section 140 read with Section 141 or Section162 cannot be accepted. The Legislature has specifically provided scheme of adjustment of compensation under Section 140 read with Section 141 and Section 162 if the claimants get compensation under the Act, while there is no such provisions under Section163A. Addition or introduction of such scheme in provisions would be impermissible.

Use of different words such as any other law, under this section any other law for the time being in force, provisions of this Act or any other provision of this Act in different sections:"

Question whether application under Section 140 is maintainable independent of application under Section 166 did not come for consideration in this case.

12 In Deepal Girishbhai Soni case (supra) the Apex Court approved Hansrajbhai Kodala case (supra) to the extent amongst others that compensation payable on structured formula basis under Section 163A is final and cannot be altered or varied in any other proceedings. It disapproves to the extent Hansrajbhai Kodala (supra) treats the annual income of

Rs.40,000/- as a cap for calculation under Section 163A. With regard to Sections 140 and 163A, the Court said in paragraph-43 to 48 that:

> *"43. The submission of learned counsel appearing on behalf of the appellants to the effect that Sections 140 and 163-A provide for similar scheme cannot be accepted for more than one reason. Payment of the amount in terms of Section 140 of the Act is ad hoc in nature. A claim made thereunder, as has been noticed herein before, is in addition to any other claim which may be made under any other law for the time being in force. Section 163-A of the Act does not contain any such provision.*
>
> *44. Section 163-A of the Act is interlinked with several sections of Chapters XI and XII thereof. Section 140 imposes a liability upon the owner of the vehicle to pay compensation where death or permanent disablement of any person has resulted from accident arising out of the use of a motor vehicle. By reason of the said provision a fixed sum is to be paid.*
>
> *45. Sub-Section (4) of Section 140 provides that the claim for compensation under sub-section (1) thereof shall not be defeated by reason of any wrongful act, neglect or default of the person in respect of whose death or permanent disablement the claim has been made nor the quantum of compensation recoverable in respect of such death or permanent disablement be reduced on the basis of the share of such person in the responsibility for such death or permanent disablement. Sub-section (5) of Section 140 of the Act categorically provides that the obligation of the owner of the vehicle shall not be in derogation of any statutory law cast upon the owner of the vehicle to pay compensation under any other law for the time being in force subject, however, to the condition as has been laid down in the proviso appended thereto that the amount of such compensation to be given under any other law should be reduced from the*

amount of compensation payable thereunder or Section 163-A.

46. Section 163-A which has an overriding effect provides for special provisions as to payment of compensation on structured formula basis. Sub-Section (1) of Section 163-A contains non-obstante clause in terms whereof the owner of the motor vehicle or the authorised insurer is liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be. Sub-Section (2) of Section 163-A is in pari materia with Sub-Section (3) of Section 140 of the Act.

47. Section 163-A does not contain any provision identical to Sub-Section (5) of Section 140 which is also indicative of the fact that whereas in terms of the latter, the liability of the owner of the vehicle to give compensation or relief under any other law for the time being in force continues subject of course to the effect that the amount paid thereunder shall be reduced from the amount of compensation payable under the said Section or Section 163-A.

48. By reason of the Section 163-A, therefore, the compensation is required to be determined on the basis of a structured formula whereas in terms of Section 140 only a fixed amount is to be given. A provision of law providing for compensation is presumed to be final in nature unless a contra indication therefor is found to be in the statute either expressly or by necessary implication. While granting compensation, the Tribunal is required to adjudicate upon the disputed question as regard age and income of the deceased or the victim, as the case may be. Unlike Section 140 of the Act, adjudication on several issues arising between the parties is necessary in a proceeding under Section 163-A of the Act."

(emphasis supplied)

Thereafter in paragraphs-57 & 58, the Court said that:

57. "We, therefore, are of the opinion that remedy for payment of compensation both under Sections 163-A and 166 being final and independent of each other as statutorily provided, a claimant cannot pursue his remedies thereunder simultaneously. One, thus, must opt/elect to go either for a proceeding under Section 163-A or under Section 166 of the Act, but not under both.

58. In Kodala (supra) the contention of the claimant that right to get compensation is in addition to the no-fault liability was, thus, rightly rejected. In agreement with Kodala (supra) we are also of the opinion that unlike Sections 140 and 141 of the Act the Parliament did not want to provide additional compensation in terms of Section 163-A of the Act."

Finally, paragraphs-61 to 63 may be quoted:

"61. It is, therefore, evident that whenever the Parliament intended to provide for adjustment or refund of the compensation payable on the basis of no-fault liability, as for example, Sections 140 and 161 in case of hit and run motor accident, from the amount of compensation payable under the award on the basis of fault liability under Section 168 of the Act, the same has expressly been provided for and having regard to the fact that no such procedure for refund or adjustment of compensation has been provided for in relation to the proceedings under Section 163-A of the Act, it must be held that the scheme of the provisions under Sections 163-A and 166 are distinct and separate in nature.

62. It is also not of much relevance that in terms of Section 140 of the Act, the owner of the vehicle has been fastened with the statutory liability and in Section 163-A thereof both the owner as also his authorised insurer has been made so liable.

63. In Sub-Section (5) of Section 140 of the Act the expression "also"

has been used which is indicative of the fact that the owner of the vehicle would be additionally liable to pay compensation under any other law for the time being in force. Proviso appended to Sub-Section (5) of Section 140 states that the amount of compensation payable under any other law for the time being in force is to be reduced from the amount of the compensation payable under Sub-Section (2) thereof or under Section 163-A of the Act. Right to claim compensation under Section 140, having regard to the provisions contained in Section 141 is in addition to any other right to claim compensation on the principle of fault liability. Such a provision does not exist in Section 163-A. If no amount is payable under the fault liability or the compensation which may be received from any other law, no refund of the amount received by the claimant under Section 140 is postulated in the Scheme. Section 163-A, on the other hand, nowhere provides that the payment of compensation of no-fault liability in terms of the structured formula is in addition to the liability to pay compensation in accordance with the right to get compensation on the principle of fault liability. It is also not correct to contend that the expression "any other law for the time being in force" used in Section 140(5) would include any other provisions of the Motor Vehicles Act. Had the intention of the Parliament been to include the other provisions of Motor Vehicles Act within the meaning of the expression "any other law for the time being in force", it could have said so expressly. The very fact that the Parliament has chosen to use the expression "any other law", the same, in our considered opinion, would mean a law other than the provisions of the Motor Vehicles Act. The proviso appended to Sub-Section (5) of Section 140 of the Act is required to be given a purposive meaning."

(emphasis supplied)

This decision does not lay down the proposition put forth by the appellant. No assistance can be drawn from Asha Rani, B. Lakshmamma, Bommithi Subbhayamma and Andhavarapu Kamaraju (supra) cases.

13 In Munshiram D.Anand v. Pravinsinh Prabhatsinh Anand Society, Navagamgedh, Jamnagar (AIR 1997 GUJARAT 60) case learned Single Judge of this Court (S.D. Shah J.) said that lodging of claim for compensation under Section 166 is not a condition precedent to filing claim under Section 140 for interim compensation on the basis of no fault liability. Even if claim under Section 166 is dismissed on grounds of limitation, application for interim compensation under Section 140 cannot be dismissed on that ground. This means, application under Section 140 survives independently. Its survival is not depending on the filing of/continuance of application under Section 166. Since both the applications were filed simultaneously and application under Section 140 is to be disposed of prior to the application under Section 166, former being termed interim application/interim compensation, otherwise once it is said that application under Section

140 is maintainable independent of claim under Section 166, it cannot be called interim compensation in these circumstances. Same view has been taken by S.D. Shah J. in Maganlal Hirabhai Patel case (supra).

14 No different proposition has been laid down by the Full Bench decision of Orissa High Court in Dinanath Agrawalla case (supra). In paragraph-9 A. Pasayat, Ag. C.J. (as he then was) said that there is no dispute with the proposition that when on a cursory scrutiny of the materials on record the Tribunal comes to hold that ultimately the Insurance Company would have no liability, question of asking it to pay under S.92-A does not arise in view of the legal position as the same stood at that time. Obviously, while claiming compensation under Section 140 apart from other documents, there is document of insurance. If it is found that the vehicle is not insured, Insurance Company cannot be asked to pay instead the owner of the vehicle can be called

upon to pay the compensation. However, once it is found that the vehicle was insured, other defences based on the policy can be examined in application under Section 166 if the same has also been filed.

15 In Thaglu Singh case (supra) Division Bench of Madhya Pradesh High Court held that the defences available to the Insurance Company under Section 149(2) can be raised at the time of adjudicating claims under fault liability, otherwise it would frustrate the legislative object introducing the concept of no fault liability. In paragraph-14, Chief Justice U.L. Bhat speaking for the Bench said:

> *"In these cases, there is no contention that the vehicles involved in the accident are not covered by policies. There is also no dispute that the vehicles were involved in accidents and death followed as consequence of the accidents. The Tribunal was, therefore, justified in directing the insurance companies to pay compensation on the basis of no fault liability. If ultimately, in passing the final award, it is found that the insurer has no liability with regard to persons who sustained injuries, fatal or otherwise, the Tribunal may issue appropriate directions for re-reimbursement of the amount from the owner(s) of the vehicle(s)."*

16 In Mithakhan Dinakhan Notiyar case

(supra), learned Single Judge of this Court (Coram: J.M. Panchal J.) examined Section 140 and Rule 231 of the Gujarat Motor Vehicles Rules, 1989 and said that Section 140 is a piece of beneficial and ameliorating legislation providing for immediate aid to the litigants. The claimant is not required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or at the fault of the owner of the vehicle concerned or of any other person. While construing social welfare legislation, Courts should adopt beneficial rule of construction, in any event construction which fulfills the policy of legislation. For awarding compensation under Section 140, the Tribunal is not required to follow the procedure contained in Rules 211 to 230 and 232. No regular trial is to be held for awarding compensation under Section 140. The Tribunal would be entitled to pass an award as soon as it comes to the conclusion that the

owner of the vehicle and insured were involved. In paragraphs-6 to 9, Panchal J. said:

> *"6. Section 140 provides that where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, or, as the case may be, the owners of the vehicles shall, jointly and severally, be liable to pay compensation in respect of such death or disablement in accordance with the provisions of the said section. The amount of compensation which is payable thereunder in respect of death of any person is a fixed sum of Rs.25,000/- (Rupees twenty-five thousand) and the amount of compensation payable in respect of the permanent disablement of any person is a fixed sum of Rs.12,000/- (Rupees twelve thousand). Sub-sec. (3) of Sec.140 provides that in any claim for compensation under sub-sec. (1) of Sec.140, the claimant shall not be required to plead and establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act, neglect or default of the owner or owners of the vehicle or vehicles concerned or of any other person. It is, thus, that to a limited extent relief has been granted under Sec.140 of the Act to the victim who has suffered permanent disablement. Such victim can claim Rs.12,000/- without proof of any negligence on the part of the owner of the vehicle or of any other person. This part of the Act is clearly a departure from usual common law principle that a claimant should establish negligence on the part of the owner or driver of the motor vehicle before claiming any compensation for permanent disablement caused on account of a motor vehicle accident. To that extent substantive law of the Country stands modified.*
>
> *There is no manner of doubt that Sec.140 of the Act is beneficial and social welfare piece of legislation. It is well settled that in construing social welfare legislation, the Courts should adopt a beneficial rule of construction and in any event, construction to be adopted on a statute should be such so as to achieve the purpose for which it is enacted and in*

favour of those in whose interest the Act has been passed. The liability under this section is made indefeasible, peremptory and total. It has been put beyond dispute that insurer is clearly liable under Sec.140 of the Act in view of the provisions contained in Secs. 145 & 147 of the Act.

7. Rule 231 of the Gujarat Motor Vehicles Rules, 1989 contains adequate provisions which would enable the claims Tribunal to satisfy itself in respect of matters necessary for awarding compensation under Sec.140 of the Act. Sub-rule (9) of Rule 231 provides that the Claims Tribunal shall proceed with the application for compensation, on the basis of -

(i) First Information Report;
(ii) Injury certificate or Post-mortem report in case of death;
(iii) Registration certificate of the motor vehicle involved in the accident;
(iv) Cover note, certificate of insurance or the policy, relating to the insurance of the vehicle against third party risks;
(v) The nature of the treatment given by the medical officer who has treated the victim.

While making an order under Sec.140 of the Act, the Tribunal is not required to follow the procedure contained in Rules 211 to 230 and 232 of the Gujarat Motor Vehicles Rules, 1989. Where compensation is claimed in respect of death or permanent disablement under Sec.140 and also in pursuance of any right on the principle of fault, the claim for compensation under Sec.140 of the Act is required to be disposed of in the first place in view of sub-Sec.(2) of Sec.140 of the Act. For awarding compensation under Sec.140 of the Act, the Claims Tribunal is required to satisfy itself in respect of the following matters:-

(i) an accident has arisen out of the use of a motor vehicle;
(ii) the said accident has resulted in permanent disablement of the person who is making the claim or death of the person whose legal

representative is making the claim;

(iii) the claim is made against the owner and the insurer of the motor vehicle involved in the accident.

8. The question that falls for consideration is as to at what stage the Tribunal is to inquire into objection raised by the Insurance Company under the Act. Should such objections be treated as preliminary issue and be decided by the Tribunal in the first instance which in the nature of things would result in delay in regard to the payment of amount under Sec.140 of the Act to the claimant and defeat the very purpose underlying the enactment of the provision? The object underlying enactment of Sec.140 is to make available to the claimant compensation amount to the extent of Rs.12,000/- in case of permanent disablement as expeditiously as possible and the said award has to be made before adjudication of the claim under Sec.168 of the Act. It must be seen that Sec.140 of the Act speaks of peremptory awards in cases of permanent disablement or death. The object underlying this consideration is the immediate relief to the disabled victim of accident in case of permanent disability. Provision of Sec.140 is a piece of beneficial and ameliorative legislation providing for an immediate aid to the hapless and helpless victims of the motor vehicles. The objects for which Sec.140 of the Act is enacted would be defeated if the Claims Tribunal is required to hold regular trial in the same manner as for adjudicating a claim made in a petition filed under Sec.168 of the Act. Having regard to the purpose underlying the enactment of the said provision, I am of the opinion that the defences raised by the insurer or other objections of the insurer or the owner should be examined later when the claims petition is decided on merits. The Claims Tribunal would be entitled to make award under Sec.140 of the Act as soon as it comes to the conclusion that the owner of the vehicle was involved and insured. The persons primarily responsible to pay compensation or damages for the accident to the injured or the heirs or legal representatives of the deceased are normally driver and owner of the offending vehicle. The liability of the insurer is spelled out qua the person or classes of persons specified in the policy that is qua the insured under Sec.147(1) of the Act; and also qua

the claimant of compensation under Sec.147(2) and 149(1) of the Act. If an award is given against insured holding him liable to pay certain amount as compensation or damages in regard to the claim arising out of an accident with his motor vehicle, then the liability of insurer is absolute and the insurer cannot question its liability on the ground that the amount is awarded on the principle of no fault liability. Moment either it is admitted by the owner of the vehicle that his vehicle is involved in the accident or from the evidence adduced on the record, the Tribunal positively holds that the vehicle of the owner in question was involved in that accident, then the Tribunal without inquiring into correctness of other objections that ma be raised by the Insurance Company would be entitled to make the award under Sec.140 and require the Insurance Company to pay specified amount to the claimants forthwith and thereafter investigate and inquire into the correctness or otherwise of the other objections that are raised either by the Insurance Company or by the owner of the offending vehicle at the time of deciding main claim petition.

9. From sub-rule (5) of Rule 231 of the Gujarat Motor Vehicles Rules, 1989 it is clear that a summary trial is contemplated for making an award or order under Sec.140 of the Act. The defence as presently raised by the insurer is naturally an issue in the main petition and it will have to be disposed of in that petition and perhaps by elaborate evidence. This type of evidence necessary for disposal of an issue which is required to be dealt with in the main petition cannot be permitted to be led at the stage of making an order under Sec.140 of the Act and in this view of the matter, I am unable to accept Mr. Makwana's challenge to the impugned order. Ultimately, if the defence of the insurer is upheld, the insurer would be entitled to claim the amount awarded against it from others, i.e., from driver and owners, but not from the claimant.

In view of the above discussion, I am of the opinion that the Tribunal was justified in not entertaining the defence raised by the petitioner when applications under Sec.140 of the Act came to be decided. No jurisdictional error is committed by the Tribunal necessitating

interference of this Court with the impugned order while exercising powers under Sec.115 of the Code of Civil Procedure. The Revision Application, therefore, fails. Rule is discharged with no order as to costs. Ad-interim relief granted earlier is hereby vacated."

This judgment is followed by Single Bench (Coram: M.S. Shah J.) in Mahendrakumar Kalyan-jibhai (supra). In paragraphs-16, 18 and 19, the Court said:

"16. Chapter X of the Motor Vehicles Act contains provisions providing for liability without fault in certain cases. Section 140 provides for liability to pay compensation in case of death or permanent disability on the principle of no fault and provisions of sub-sec.(1) of Sec.141 preserve the right to claim compensation on the traditional principle of fault. Sub-sec.(2) of Sec.141 provides that a claim for compensation under Sec.140 in respect of death or permanent disablement of any persons shall be disposed of as expeditiously as possible and that where compensation is claimed, in respect of such death or permanent disablement under Sec.140 and also in pursuance of any right on the principle of fault, the claim for compensation under Sec.140 shall be disposed of in the first place. Sub-sec.(3) of Sec.141 while providing that compensation paid under Sec.140 shall be adjusted against the higher amount of compensation payable on the principle of fault also provides that if the compensation payable on the principle of fault is less than the compensation already paid under Sec.140, the compensation under fault liability is not required to be paid, but there is no provision requiring the claimant to refund such amount received under Sec.140. Section 142 defines what will be treated as permanent disablement. Section 143 provides for applicability of Chapter X also to claims for compensation under the Workmen's Compensation Act. Section 144 gives overriding effect to the provisions of Chapter, notwithstanding anything contained in any other provisions of the Motor Vehicles Act or of any other law for the time-bing in force.

17. xxx xxx xxx

18. Rule 231 of the Gujarat Motor Vehicles Rules, 1989, particularly sub-rule (9) thereof provides that that claims Tribunal shall proceed with the application for compensation under Sec.140 of the Act on the basis of -

(i) First Information Report;
(ii) Inquiry certificate of post mortem report in case of death;
(iii) Registration certificate of the motor vehicle involved in the accident;
(iv) Cover note, certificate of insurance or the policy, relating to the insurance of the vehicle against third party risk;
(v) the nature of the treatment given by the medical officer who has treated the victim.

19. Before dealing with the submissions urged by Mr. Nanavati, at the outset it is necessary to bar in mind a few caveats and perceptions.

Firstly, compensation payable under Sec.140 of the New Act is not "interim compensation" as is ordinarily understood. Section 140 does not use this expression. It is necessary to bear this caveat in mind because the word "interim" conditions our mind imperceptibly to turn to the general principle of civil law that what the plaintiff cannot get at the final hearing, he cannot get at an interim stage. Once we get rid of this conditioning, it is much easier to appreciate the scheme of provisions of Sec.140 of the New Act (corresponding to Sec.92A of the Old Act) and similar other provisions.

For instance, when a wife applies for maintenance pendente lite in a matrimonial petition, she is required to lead and show the fact of marriage with the respondent and her inability to maintain herself from her own source of earnings and not that she is likely to succeed in finally getting the relief prayed for in the main petition.

Secondly, we must also bear in mind the reason why Parliament had to provide for compulsory insurance. As pointed out by the Supreme Court in the case of Skandia Ins. Co. Ltd. v. Kokilaben Chandravadan, AIR 1987 SC 1184, the law may provide for compensation to the victims of the accident who sustain injury in the case of an automobile accident or compensation to the dependents of the victims in the case of fatal accident, but such protection would remain illusory unless there is a guarantee that the compensation would be recovered from the persons held liable for the consequences of the accident. A Court can only pass an award or decree. To see that the exercise undertaken by the Courts does not remain an exercise in futility, the Legislature has provided for compulsory insurance coverage for use of the motor vehicles. Even in the case of Motor Owners Insurance Co. Ltd. v. Jadavji Keshavji Modi, 1981 GLR 1208 (SC): 1981 ACJ 507, the Supreme Court has expressed the difficulties of the victims of motor vehicle accident and their heirs in the following words:

"common experience shows that the woes of the injured and of the heirs of those who perish in automobile accidents begin after they embark upon the adventure of execution proceedings ..... There are proverbial difficulties in proving ownership of goods vehicles, particularly if they are subject to a hire-purchase agreement and truck owners are quite know for the case with which they proclaim their insolvency. It is, therefore, no consolation that the left-over liability will fall on the insured."

The difficulties that befall on the claimant after the award on the basis of fault principle are bound to stare him in the face even after compensation is awarded to him under Sec.140 of the Act.

The third important aspect, which is also required to be borne in mind and which appears to have prompted the Legislature in introducing Sec.92A in the Old Act corresponding to Sec.140 of the New Act, is the unfortunate spectre of phenomenal delays in disposal of motor accident claim cases. Such claim cases were expected to be decided within a very short time of a year or so. Unfortunately, such cases now drag on for as

long as 10 to 12 years. While the system of Lok Adalats has certainly made substantial contribution in easing this problem, the fact remains that at Lok Adalats claim petitions with pendency of 2 to 3 years get settled but such petitions pending for 8 to 10 years or longer do not get settled, because the Insurance Companies refuse to pay any interest on the amount of compensation which may be worked out by mutual consent as reasonable compensations. Since this works out to as much as 90% of the compensation or even 150% of the compensation (12% rate of interest x 8 years – 96%, 12% x 10 years – 120% and so on and so forth), the claimants and their advisers are reluctant to settle old claim petitions at Lok Adalats. The representatives of Insurance Companies plead their inability to agree to payment of any interest even at a lesser rate than the rate at which the Tribunals normally award interest, on the ground of a directive from the higher-us in the General Insurance Corporation. It is a matter of regret that such intransigent attitude is adopted which on the one hand prolongs the misery of the victims of motor accidents or their heirs and on the other hand adds burden on the Insurance Company by way of interest liability which goes on piling up. Be that as it may, even pendency of claim petitions for 2 to 3 years would mean that persons who have suffered permanent disablement in a motor vehicle accident or heirs (usually widows and minor children) of victims who have succumbed to the injuries in such accidents have to continue to starve until they would get the award on the basis of fault principle after all the vicissitudes of the trial and defences raised by the Insurance Company would be examined.

Fourthly, anyone who has even a nodding acquaintance with our legal system in action (or inaction) knows that a large part of the Courts' time is consumed by hearing of applications for interlocutory orders at which hearings the first question being examined at length is whether the plaintiff/petitioner has a prima facie case on merits. Interlocutory applications are also decided after six months if not a couple of years.

Fifthly, as has already been observed by the Supreme Court in the case of Skandia Ins. Co. v. Kokilaben Chandravadan (supra) a benevolent

provision made by legislature cannot be nullified by reading it with a non-benevolent eye and with a mind not tuned to the purpose and philosophy of the legislation without being informed of the true goals sought to be achieved. What the legislature has given the Court cannot deprive of by way of an exercise in interpretation when the view which renders the provision potent is equally plausible as the one which renders the provisions impotent.

Thereafter, the Court said in paragraphs-25 and 29 that:-

25. If the Legislature had intended that all such questions about defences of the Insurance Company could be raised in proceedings under Sec.140 of the Act. Sec.144 would have provided that the provisions of Chapter X shall have effect subject to the provisions of Sec.149(2) of this Act but notwithstanding anything contained in any other provisions of this Act or of any other law for the time-being in force.

29. In view that I have taken about the scope of inquiry under Sec.140 of the Act, it is not necessary to go into the merits of the other defences urged by the learned Counsel for the Insurance Company."

17. Similarly, Division Bench of Himachal Pradesh High Court said in Bhajnoo case (supra) that defences available to insurance company are not required to be inquired into before making insurance company liable for interim award under no fault liability. (See *United India Insurance Co. Ltd. v. Ghisi Devi, 1989 ACJ 728 (Rajasthan)* .

18. In Sarju Ram case (supra) the Tribunal awarded interim compensation under Section 140 in advance of application under Section 166. Question for consideration was similar to one before us. Single Judge, Ranchi Bench of Patna High Court held that Chapter X of the Act being an independent provision has overriding effect over any other provision of the Act. In paragraphs-6 & 7, the Court examined Chapter X of the Act and said:

> *"6. From bare reading of the aforesaid provision, it is manifest that in case of death or permanent disablement of any person has resulted from an accident arising out of the use of the motor vehicle, the owner or the owners shall be jointly and severally liable to pay compensation. In such an application the claimant is not required to plead and establish negligence. Sub-section (5) very specifically clarified that notwithstanding payment of compensation under this Chapter, the owner of the vehicle is also liable to pay compensation under any other law for the time being in force. It is, therefore, evident that claiming compensation under no fault liability under S.140 of the Act is not dependent upon the filing of the application under S.166 of the Act. This has also been clarified by the legislature under S.141 of the Act ....*
>
> *7. On the plain reading of this provision, it is abundantly clear that such application filed under S.140 of the Act shall be disposed of independently irrespective of the fact whether claim under S.166 of the Act has been filed by the claimant or not. The proviso to sub-section (1) of S.168 also provides that where the claimant has made a claim for compensation*

under S.140 of the said Act then such claim for compensation shall be disposed of in accordance with the provisions of Chapter X of the Act."

Finally, the Court said in paragraph-19 that:

"19. Having regard to the entire facts and circumstances of the case and the law discussed hereinabove, I am, therefore, of the definite opinion that Chapter X of the Act is an independent provision and the Tribunal is bound to decide the claim application filed under Section 140 of the Act for grant of interim compensation notwithstanding the claimant having filed any other application under Section 166 or under any other provisions of the Act. I am further of the opinion that the provision of Chapter X has overriding effect over any other provision of the Act and the Legislatures have made it clear under Section 144 of the said Act."

19. The Division Bench of Patna High Court also holds in Fida Hussain case (supra) that application under Section 140 on principle of no fault is maintainable without filing any claim under Section 166. Therefore, application under Section 140 has to be disposed of independently, thus, approves Single Bench decision in Sarju Ram case (supra). In paragraph-7, the Court said:

"7. From a close reading of the above provisions it is manifest that the Act does not create any bar, express or implied, to the filing of any application under section 140 directly without filing claim under section

166 of the Act. As a matter of fact, sub-section (1) of section 141 makes it clear that the right to claim compensation under Section 140 is in addition to any other right. It cannot thus be made dependent on filing of claim under Section 166 of the Act. Of course, where the claimant lodges a claim for structured compensation in terms of the formula contained in the Second Schedule in accordance with section 163-A or on the basis of fault under section 166 the amount of compensation payable or paid under section 140 is to be deducted from the amount found payable under section 163-A or 166 as the case may be. It is also clear that application under Section 140 of the Act has to be disposed of independently in accordance with the provisions of Chapter X of the Act which have an overriding effect."

In paragraph-13 it has been said that:

"13. The above aspects of the Act were not at all considered by the learned single Judge in the cases of Oriental Insurance Co. Ltd. v. Chulchul Devi, 1999(1) PLJR 747 and Divisional Manager, Oriental Insurance Co. Ltd. v. Gulzari Kuer, 1999 (1) PLJR 872, in which by rather cryptic orders, the same learned Judge held that a direct application under section 140 was not maintainable. The decisions, in my opinion, do not lay down the correct law and deserve to be overruled. In fact, earlier in the case of Oriental Insurance Co. Ltd. v. Mohiuddin Kureshi, 1994 ACJ 74 (Patna), a Division Bench of this court had observed:

"From a conjoint reading of the aforementioned provisions there cannot be any doubt that an application under section 140 of the said Act can be filed separately.

Recently, another learned single Judge of this court in the case of Oriental Insurance Co. Ltd. v. Sarju Ram, 2002 ACJ 177 (Patna), has taken a similar view regarding maintainability of an independent application under section 140 of the Act which, in my opinion, is the correct legal position."

Finally, in paragraph-15 the Court held that:

"15. In the above premises, I hold that an application under section 140 of the Motor Vehicles Act on principle of `no fault' compensation is maintainable without filing any claim under section 166 of the Act."

20. Question arising for consideration in these appeals did not arise in Madho Singh case (supra). It is a case of fault liability under Section 166 against which insurance company can raise defences available to it. Whether it can be called upon to meet the liability of claimant and recover the same from the insurance company after having succeeded in proving its defences does not arise for consideration, otherwise, the issue has been considered by the Apex Court in catena of cases.

21. The Division Bench decision (Coram: Bhawani Singh C.J. and Abhilasha Kumari J.) in Babubhai Purshottambhai Harijan case (supra) deals with this question extensively maintaining the view of this Court in Mithakhan Dinakhan Notiyar, Mahendrabhai Kalyanjibhai, Munshiram and Maganlal Hirabhai

Patel cases (supra). It has been said that:

> *"10. The object behind these Sections is to speed up payment of compensation on "no fault" principle. The victim(s) of accident are, under these beneficial provisions, entitled to get the minimum statutory relief expeditiously. Speed for expeditious disposal and payment of compensation is the essence. Otherwise, injustice and breach of legislative intent is the consequence. Section 140 is a piece of legislation intended to provide immediate relief to the victim(s). This provision is clearly a departure from the usual common law principle that claimant should establish negligence on the part of the owner or driver of the motor vehicle before claiming compensation for the death or permanent disablement caused on account of the use of a motor vehicle [See: Gujarat State Road Transport Corporation, Ahmedabad v. Ramanbhai Prabhatbhai and another (AIR 1987 SC 1690)]. The claimant is required to state that death or permanent disablement has resulted from an accident arising out of the use of a motor vehicle or motor vehicles. He is not required to prove it like claim of fault liability under Section 166. Sub-section 2 of Section 141 provides that claim for compensation under Section 140 in respect of death or permanent disablement shall be disposed of as expeditiously as possible and where compensation is claimed in respect of such death or permanent disablement under Section 140 and also in pursuance of any other right on the principle of fault, the claim for compensation under Section 140 shall be disposed of as aforesaid in the first place. Claim for compensation under Section 140 is independent. It need not be preceded or succeeded by claim under Section 166. Nowhere, Section 140 envisages this. Therefore, claim under Section 140 can be adjudicated and compensation awarded in absence of claim under Section 166 [See: Munshiram D.Anand v. Pravinsinh Prabhatsinh Anand Society, Navagamgedh, Jamnagar (AIR 1997 GUJARAT 60)]. Object behind the former is to pay statutory compensation by expeditious disposal thereof and following the normal procedures for disposal in the later which generally takes time for proof and establishment of respective claims and defences of parties. Finally, Section 144 should clear the mist. It gives overriding effect to this Chapter over any other provisions of this Act or any other law for the time being in*

force. Therefore, this provision is independent as against other provisions in the Act providing for adjudication of claims for compensation, for example, Sections 161, 166 and 163. True it may be, all these claims are lodged before the Claims Tribunal and adjudicated by it, but that should not mean following the same method of trial. Deeper analysis of Sections 140, 161, 166 and 163-A would demonstrate that the legislature provides different modes for adjudication of claims under these provisions. Claim under Section 140 is decided summarily to achieve legislative intent of expeditious disposal of such claim for the benefit of victim(s) of accident. Therefore, defences put up by opponents can be adjudicated during trial of claim under Section 166 and in the event insurance company succeeding in establishing its defences, it can recover the loss from the insured, but not from the victims since they receive compensation under the principle of "no fault liability".

Even proviso to sub-section (1) of Section 168 provides that claim for compensation under Section 140 in respect of death or permanent disablement of any person, whether made in such application or otherwise, shall be disposed of in accordance with the provisions of Chapter-X."

Thereafter, in paragraphs-11 and 12 it has been said that

"11. There may be cases where claim is lodged under Section 140 alone. In that situation, insurance company can recover the amount from the insured. However, where both the claims are lodged, compensation paid under Section 140 can be adjusted with compensation ultimately awarded under Section 166 and where the Claims Tribunal ultimately holds that insurer was not liable to pay compensation, it would be entitled to reimbursement from the insured. [See: National Insurance Co. Ltd. v. Jothu Ram & Ors. (Supreme Court) (1998(3) GLR 2261)].

12. With hereto before examination of the matter, it cannot be said that compensation awarded under Section 140 is interim compensation simply because of adjustment against compensation awarded under

Section 166. Opposite view taken by Full Bench of Karnataka High Court in United India Insurance Co. Ltd. v. Immam Aminasab Nadaf and others (supra) and in other decisions on similar lines, with respect, do not appeal to us in view of clear legislative intent running through provisions under Chapter-X of the Motor Vehicles Act, 1988 and Section 168."

Finally, in paragraph-14 it is said that:

14. Therefore, what we conclude is, claims under Sections 140, 161, 166, 163-A are independent of each other and tried accordingly. However, claim under Section 140 is triable summarily and expeditiously without requiring the victim to establish death or permanent disability due to any wrongful act, neglect or default or the owner of the vehicle concerned or of any other person. Compensation awarded under this provision is being awarded under "no fault liability", therefore final, claimable by the insurer from the insured. However, where claim under Section 166 is filed, adjustment of amount paid under Section 140 with amount awarded under Section 166 can be done since Court has to award `just' compensation under Section 168 of the Act and avoid unjust enrichment of the victim."

22 With a view to examining the matters further, it would be desirable to quote statement of objects and reasons prompting the legislature making provisions for payment of compensation by way of no fault liability in hit and run cases:-

STATEMENT OF OBJECTS AND REASONS

There has been a rapid development of road transport during the past few years and a large increase in the number of motor vehicles on the

road. The incidence of road accidents by motor vehicles has reached serious proportions. During the last there years, the number of road accidents per year on the average has been around 1.45 lakhs and of these the number of fatal accidents has been around 20,000 per year. The victims of these accidents are generally pedestrians belonging to the less affluent sections of society. The provisions of the Act as to compensation in respect of accidents can be availed of only in cases of accidents which can be provided to have taken place as a result of a wrongful act or negligence on the part of the owners or drivers of the vehicles concerned. Having regard to the nature of circumstances in which road accidents take place, in a number of cases, it is difficult to secure adequate evidence to prove negligence. Further, in what are known as "hit-and-run" accidents, by reason of the identity of the vehicle involved in the accident not being known, the persons affected cannot prefer any claims for compensation. It is, therefore, considered necessary to amend the Act suitably to secure strict enforcement of road safety measures and also to make, as a measure of social justice, suitable provisions first for compensation without proof of fault or negligence on the part of the owner or driver of the vehicle and, secondly, for compensation by way of solatium in cases in which the identity of the vehicle causing an accident is unknown. A number of suggestions have been received for amendment of the Act from the State Governments, Union territory administrations, representative organizations and other persons for making the provisions of the Act more effective. The Law Commission of India, in its Fifty-first Report on Compensation for Injuries Caused by Automobiles in Hit-and-Run Cases, has made certain suggestions with respect to hit-and-run cases. The Law Commission has also made a number of suggestions in its Eighty-fifth Report on Claims for Compensation under Chapter VIII of the Act. The examination of these suggestions would take some time. The more important of these suggestions, which require to be implemented urgently, have been identified and it is proposed to give effect to the same through the present Bill.

2. The Bill seeks to give effect to the following proposals:-

(a) A new Chapter VIIA, providing for payment of compensation in certain cases of accidents without proof or fault or negligence on the part of the owner or the driver of the motor vehicle is being inserted in the Act. Under this Chapter, the owner of the vehicle involved in an accident will be liable to pay compensation of a fixed sum of Rs.15,000/- in respect of the death of a person and a fixed sum of Rs.7,500 in respect of permanent disablement of any person. For securing this compensation, it will not be necessary to prove any wrongful act or negligence on the part of the owner or the driver of the vehicle. Right to claim the compensation aforesaid is without prejudice to any right to claim a higher compensation on the basis of the wrongful act or negligence of the owner or the driver of the vehicle. However, the compensation payable by an owner on the basis of wrongful act or negligence on his part would be reduced by the compensation already paid by him under this Chapter. It has also been provided that the claim for compensation under the Chapter should be disposed of as expeditiously as possible. The benefit of the provisions of the Chapter

would also be available in cases where compensation is claimed in respect of a motor accident under any other law, as for example the Workmen's Compensation Act, 1923. It may also be mentioned that the owner of a vehicle will have to insure himself against liability to third parties under this Chapter to the same extent as he has to insure himself against liability to third parties in cases where he is in default or negligent (vide clauses 11, 12, 15, 16, 17, 18 and 19).

(b) A fascicle of sections is being inserted immediately after section 109 of the Act to provide for compensation in cases of hit-and-run motor accidents. These provisions envisage the establishment of a Solatium Fund by the Central Government for the purpose of paying compensation in cases of hit-and-run motor accidents. The Fund will consist of contributions by the General Insurance Corporation and insurance companies carrying on general insurance business in India, contributions by the Central Government, State Governments and other sums which may be received for being credited to it from any source. Provision is being made for payment of compensation only in cases of death or grievous hut as defined in the Indian Penal Code. The compensation payable in respect of death of a person in a hit-and-run motor accident will be a fixed sum of Rs.5,000/- while the compensation payable in case of grievous hurt to a person is a fixed sum of Rs.1,000. In the event of the identity of the motor vehicle involved in the accident becoming subsequently found out and compensation being recovered through the Claims Tribunal or court or other authority in respect of the death of or for grievous hurt to any person for which compensation has been paid from the Solatium Fund, the compensation paid from the Solatium Fund will have to be refunded to the Fund. The provision is also being made for the making of a scheme to provide for the authority in which the Solatium Fund shall vest, for the administration of the Solatium Fund and for all matters connected with payment of compensation from the Solatium Fund [vide clauses 14 and 18(a)].

(c) It is proposed to make it compulsory for every person driving a motor vehicle to have his photograph affixed on his licence. Suitable provision is also being made for giving sufficient time for existing holders of driving licences to have their photographs affixed on their licences (vide clauses 2, 3, 4, 5 and 27).

(d) It is proposed to make it compulsory for persons driving motor vehicles to keep their driving licences in their possession on all occasions while driving. This will enable speedy detection of persons driving vehicles without licences (vide clause 10).

(e) With a view to ensuring uniformity in respect of display of figures in the registration marks of vehicles, it is being provided that such figures shall be in Arabic numerals (vide clause 6).

(f) The power to prescribe registered laden wights and safe axle weights for transport vehicles, which is at present with the State Governments, is being transferred to the Central Government with a view

to securing uniformity (vide clause 7).

(g) The power to make rules with respect to specifications for construction, equipment and maintenance regarding length, width, height, etc., size, nature and condition of tyres of vehicles which is at present with the State Governments, is being transferred to the Central Government with a view to achieving uniformity (vide clauses 8 and 9).

(h) With regard to third party insurance risk, the insurance liability is, at present, fixed under the Act with reference to the vehicle as a whole. This is proposed to be altered in the case of public service vehicles to provide a limit with reference to the passengers. The limit with respect to the insurers' liability to a passenger involved in an accident in a public service vehicle is being fixed at Rs.15,000/-. The existing limits of insurance liability in respect of goods vehicles as also damage to property are proposed to be raised (vide clause 13).

(i) A specific offence is being provided for to cover cases of driving of motor vehicles in contravention of sections 3 and 4 of the Act (vide clause 21).

(j) With a view to speedy disposal of cases, provision is being made for compounding of certain offences under the Act. This provision would also apply to pending cases (vide clause 26).

(k) The punishment by way of fine for offences under sections 113A, 115(1), 116, 120 and 123 are proposed to be raised (vide clauses 20 and 22 to 25).

3. The Bill seeks to achieve the above objects."

23 Chapter X deals with liability without fault in certain cases. Section 140 corresponding to Section 92-A of Motor Vehicles Act, 1939 (Chapter VII-A) provides for liability for payment of compensation without fault in cases of death or permanent disability departing from principle of fault liability. Section 140 envisages where death

or permanent disablement of any person has resulted from accident arising out of motor vehicle or motor vehicles, the owner(s) shall be jointly and severally liable to pay compensation. Extent of amount payable is prescribed in subsection (2). Making the claim under principle of no fault liability under Section 140, claimant is not required to plead and establish that the death or permanent disablement in respect of which the claim is made was the result of any wrongful act on the part of owner(s) of the vehicle(s) concerned or any other person. The claim cannot be defeated by reason of any wrongful act, neglect or default of the victim of accident nor shall the quantum be reduced for negligence. Subsection (5) of Section 140 provides that in addition to the compensation awardable under subsection (2), owner of the vehicle shall be liable to pay compensation under any other law for the time being in force. Where compensation is claimed and awarded under such other law, it shall be

reduced from compensation paid under subsection (2) of Section 140 or under Section 163-A. Conclusion irresistible is where compensation is not claimed under any other law, reduction/recovery does not arise. Subsection (2) of Section 141 provides that a claim for compensation under Section 140 in respect of death or permanent disablement of any person shall be disposed of as expeditiously as possible and where compensation is claimed in respect of such death or permanent disablement under Section 140 and also in pursuance of any right on the principle of default, the claim for compensation under Section 140 shall be disposed of in the first place. Subsection (3) of Section 148 provides that compensation paid under Section 140 shall be adjusted against the higher amount of compensation payable on the principle of fault and that if the compensation payable on the principle of fault is less than compensation payable under Section 140, the compensation under fault

liability is not required to be paid. There is no provision requiring the claimant to refund the amount paid under Section 140. Section 142 defines permanent disablement while Section 144 accords overriding effect to the provisions of this Chapter notwithstanding anything contained in any other provision of this Act or of any other law for the time being in force. This Chapter, therefore, stands apart from other Chapters and from other provisions of law for the time being in force. Therefore, it is independent, workable as such, the limitation being where compensation has also been given under any other law, compensation awarded under Section 140 is reducible provided the compensation awarded under any other law is higher and that where both claims, one under Section 140 and the other under Section 166 or under Section 163-A, are filed claim for compensation under Section 140 shall be disposed of in the first place, rightly so, because amount paid under Section 140 is reducible from the amount of

compensation paid under any other provision, but there is no provision requiring filing of applications under no fault liability and under fault liability together nor there is provision against maintainability of application under Section 140 in the absence of application under Section 166. Chapter XI provides for insurance of motor vehicles against third party risks. Sub clause (c) inhibits liability in respect of Section 140. Whose liability, obviously, the liability of the tort feaser and the insurance company with which the vehicle is insured. Section 149 provides for duty of insurer satisfying judgements and awards against persons insured in respect of third party risks. Subsection (2) thereof mentions the defences available to the insurance company. Explanation in Section 149 refers to Claims Tribunal constituted under Section 165 and "award" made by the Tribunal under Section 168. Section 161 provides for compensation in cases of hit and run motor accidents, names contributors,

framing of scheme (under Section 163) and payment to victims to the extent stated in subsection (3). Section 162 provides for refund of this compensation to the extent and in the circumstances stated. Section 163-A provides for payment of compensation on structured formula basis. Subsection (2) thereof is similar to Section 140(2) and provides that in any claim for compensation under subsection (1) of Section 163-A, the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act of or neglect or default of the owner of the vehicle or vehicles concerned or of any other person. It is noticeable that the Act provides for compensation, in no fault liability (Sec. 140, Chapter X), in hit and run motor accidents (Sec.161 Chapter XI) and fault liability payable, on structured formula basis (Sec.163-A Chapter XI) and under Section 166. For adjudication of these claims, Section 161

provides for Claims Tribunals (Chapter XI). Proviso to subsection (2) of Section 166 requires that where no claim for compensation under Section 140 is made, such application shall contain a separate statement to that effect immediately before the signature of the applicant. This is to meet the requirement of proviso to subsection (5) of Section 140 and subsection (2) of Section 141. Since Tribunal has to award just compensation under Section 168 and avoid unjust enrichment of the claimant, proviso to Section 168 makes it clear that where application under Section 166 makes claim for compensation under Section 140 in respect of the death or permanent disablement of any person, such claim and any other claim, whether made in such application or otherwise, for such compensation in respect of such death or permanent disablement, shall be disposed of in accordance with the provisions of Chapter X. Therefore, intention of legislature is that claim under Section 140 is triable in accordance with the provisions

of Chapter X, which is summary in nature. Such a claim requires to be disposed of as expeditiously as possible so that compensation is available to the victim as compared to long trial of claim under Section 166 r.w. Rules 211 to 229, The Gujarat Motor Vehicles Rules, 1989, and for summary procedure for paying compensation on the principle of no fault liability in Section 140 r.w. Rule 231, which fortifies the conclusion that Section 140 is independent of Section 166.

24 Having taken the bull by horns, conclusions irresistible may be summarized. Section 140 (Chapter X)) provides for fixed sum of compensation in cases of no fault liability. It is independent of Section 161 (payment of compensation in cases of hit and run motor accidents), Section 163-A (payment of compensation on structured formula basis/fault liability - Chapter XI) and Section 166 (fault liability - Chapter XII). Application for compensation under Section 140

is maintainable without there being application for compensation under Section 163-A or under Section 166 and disposable accordingly, and compensation awarded shall be final. But, where two applications are filed under Section 140 and 163-A or under Section 140 and under Section 166, compensation awarded under Section 140 shall be reduced from the amount of compensation awarded under Section 163-A or under Section 166 provided the compensation awarded under the latter provisions are higher, otherwise, compensation paid under Section 140 would be final. Further, where claim is preferred only under Section 140 and not any other provision, compensation awarded under Section 140 shall be final. Section 140 does not provide for interim/ad-hoc compensation because compensation paid under this Section is final. `Interim/ad-hoc compensation' is used when apart from application under Section 140 there is also application under Section 163-A or under Section 166, since the amount of

compensation paid under Section 140 is made deductible. Where in addition to application for compensation under Section 140 there is application under other provisions on principle of fault liability, application under Section 140 shall be disposed of in the first place, since expeditious disposal of application under Section 140 is the basic theme of this beneficial piece of legislation. But, where claimant has filed application under Section 140, but not under any other provision claiming compensation on fault liability principle, application is maintainable and compensation awardable, but not recoverable from the claimant. The insurance company is not entitled to seek trial on merit of any legal defences available to it under Section 149(2) of the Act. Remedy of insurance company is against the owner of the vehicle invoking defences available to it, but not against the claimant. Law laid down by this Court in *Munshiram D.Anand Vs. Pravinsinh Prabhatsinh Anand Society, Navagamgedh, Jamnagar (Coram: S.D.*

Shah J.) (AIR 1997 GUJARAT 60), United India Insurance Co. Ltd. Vs. Maganlal Hirabhai Patel and others (S.D. Shah J.) (1999 ACJ 268), New India Assurance Co. Ltd. Vs. Mithakhan Dinakhan Notiyar (Coram: J.M. Panchal J.) (1995(2) GLR 1111), Mahendrakumar Kalyanjibhai Vs. Haresh Bipinchandra Pathak (Coram: M.S. Shah J.) (1998(2) GLR 1199) and Division Bench in *New India Assurance Co. Ltd. vs. Babubhai Purshottambhai Harijan and others (F.A.No.133 of 2006 with C.A. 527 of 2006) (Coram: Bhawani Singh C.J. and Abhilasha Kumari J.) is correct, contentions to the contrary untenable. Reference is answered accordingly.*

What emerges out of the aforesaid conclusion is that there is no merit in these appeals. They are dismissed leaving the parties to bear respective costs of these appeals.

(BHAWANI SINGH)
CHIEF JUSTICE

(H.K. RATHOD)
JUDGE

(ABHILASHA KUMARI)

JUDGE

Since we have dismissed the Appeals, Shri Nanavati seeks stay of the judgment, which we hereby decline.

(BHAWANI SINGH)
CHIEF JUSTICE

(H.K. RATHOD)
JUDGE

(ABHILASHA KUMARI)
JUDGE

[SN DEVU]